129-346

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~385.~~ 114

WILLIAM PINKERTON, PLAINTIFF IN ERROR,

vs.

EPIFANIO LEDOUX.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED OCTOBER 13, 1885.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the Territory of New Mexico, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court, before you, between William Pinkerton, plaintiff in error, and Epifanio Ledoux, defendant in error, a manifest error hath happened, as it is said, to the great damage of the said plaintiff in error, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1885, next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

1½ Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the 21st day of March, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal of the Supreme Court, Territory of New Mexico.]

C. M. PHILLIPS,
Clerk of the Supreme Court of the Territory of New Mexico.

I hereby make return to the within writ by annexing thereto an authenticated transcript of the record, citation to the adverse party, and the opinion filed in said cause under my hand and the seal of said supreme court.

[Seal of the Supreme Court, Territory of New Mexico.]

C. M. PHILLIPS, *Clerk.*

[Endorsed:] Territory of New Mexico supreme court. William Pinkerton, pl't'ff in error, *vs.* Epifano Ledoux, def't in error. Writ of error. Filed in my office this 21st day of March, 1885. C. M. Phillips, clerk.

2 Supreme Court of the Territory of New Mexico.

WILLIAM PINKERTON *vs.* EPIFANIO LEDOUX.

WILLIAM PINKERTON, Plaintiff in Error,
vs.
EPIFANIO LEDOUX, Defendant in Error.

Be it remembered that heretofore, to wit, on the 15th day of November, 1884, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico the following transcript of the

record of the district court of the first judicial district of said Territory within and for the county of Mora in the above-entitled cause; which said transcript was and is in the words and figures following, to wit:

3 *Transcript of Record.*

In the Supreme Court of the Territory of New Mexico. January Term, 1885.

WILLIAM PINKERTON, Plaintiff in Error,
vs.
EPIFANIO LEDOUX, Defendant in Error.

Error to Mora county.

Catron, Thornton & Clancy, attorneys for plaintiff; M. W. Mills, attorney for defendant.

4 TERRITORY OF NEW MEXICO, *County of Mora:*

Be it remembered that heretofore, to wit, on the 20th day of July, A. D. 1881, William Pinkerton, by his attorneys, Catron and Thornton, filed in the clerk's office of the district court of the first judicial district of the Territory of New Mexico within and for the county of Colfax his declaration; which said declaration was and is in the words and figures following, to wit:

Declaration.

TERRITORY OF NEW MEXICO, *County of Colfax:*

In the District Court for the First Judicial District of the Territory of New Mexico, sitting in and for the county of Colfax for the trial of causes arising under the laws of the Territory, at the August term, A. D. 1881.

To the Honorable L. Bradford Prince, chief justice of the supreme court of the Territory of New Mexico and judge of the first judicial district court thereof:

Your petitioner, William Pinkerton, a resident of the county of Mora, in the Territory of New Mexico, complains of Julian Ledoux and Epifanio Ledoux, residents of the county of Colfax, in the Territory of New Mexico, in an action of ejectment.

For that whereas heretofore, to wit, on the first day of July, A. D. 1881, to wit, at the county of Colfax, in the Territory of New Mexico, the said plaintiff was and from thence hitherto has been entitled to the possession of that certain tract and parcel of land lying and being situated in the county of Colfax, in the Territory of New Mexico, and being a portion of that larger tract of land commonly known as and called the "Nolan grant" (and which said grant was, on or about the eighteenth day of November, A. D. 1845, made by Manuel Armijo, then Governor of the Territory of New Mexico, to Gervacio Nolan and two others), being the same one hundred and sixty acres

of land upon which the said defendants now reside and occupy,
5 and upon which they have a dwelling-house wherein the said defendants or one of them reside, situated on the north-west third of the above-mentioned grant and bounded upon all sides by lands of the plaintiff; that afterwards, to wit, on the day and year last aforesaid, the said defendants, at the county of Colfax aforesaid, entered into such premises and unlawfully withheld from the plaintiff the possession thereof, and from thence hitherto have continued and still do continue to withhold from the said plaintiff the possession thereof, to his damage in the sum of one thousand dollars.

Plaintiff therefore brings his suit and asks the judgment of this court for the recovery of the possession of said premises, together with the sum of one thousand dollars, his damages as aforesaid, and for his costs of suit.

CATRON AND THORNTON,
Attorneys for Plaintiff.

And afterwards, to wit, on the 5th day of August, 1882, the said defendants, by their attorney, M. W. Mills, filed in said clerk's office their pleas; which said pleas are in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, *County of Colfax:*

August Term, A. D. 1882.

WILLIAM PINKERTON *vs.* JULIAN LEDEUX *et al.*

First Plea.

And the said defendants in the above-entitled cause, by M. W. Mills, their attorney, come and defend against the force and injury, when, &c., and say they are not guilty of the said supposed trespass and ejectment above laid to their charge, nor of any trespass or ejectment laid to their charge by said plaintiff, in manner and form as the said plaintiff hath above complained against them, and of this they put themselves upon the country, &c.

M. W. MILLS,
Attorney for Defendants.

6 And the said plaintiff doth the like.

T. B. CATRON,
Attorney for Plaintiff.

Second Plea.

And, for a further plea in this behalf as to the supposed ejectment in the said petition of the said plaintiff as the same are alleged above, the said defendants say that they have title to the premises as the same are above described by the said plaintiff, and that such title has been acquired by conveyance founded on an entry upon the said lands and premises, and that a further title has by the said

defendant been acquired by a grant from the United States and under the laws of the United States, and that since such title so belonging to the said defendants, and during the time the same was being acquired, certain valuable improvements have by said defendants and their grantors been erected, built, and placed upon said lands and premises, consisting of dwelling-houses, outhouses, barns, fences, corrals, ditches, &c., to wit, of the value of five thousand dollars, at, to wit, the county of Colfax aforesaid; and the said defendants here give notice to the said plaintiff that they will at the trial of said cause prove the value of said improvements so made by defendants as aforesaid since the time they were so made and the commencement of this suit by said plaintiff, when it shall appear and the said plaintiff shall have maintained title to the said land described as aforesaid; and this the defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

Third Plea.

And the said defendants, for other and further special plea in this behalf, say that heretofore, and before the commencement of this suit by the said complainant, certain other valuable improvements had by the said defendants before that time been built, erected, and made to and upon the land above described as aforesaid, consisting of dwelling-houses, outhouses, barns, stables, corrals, fences, and ditches, of great value, to wit, of the value of five thousand dollars, at, to wit, the county of Colfax aforesaid, and that before in any manner the said plaintiff could deprive or take from the said defendants possession of the said land or improvements or the part or portion of the same the said plaintiff is liable to pay the value of the said improvements in full, and the full value of the improvements attaches to the said land as a lien upon the same, and the said defendants are entitled to have the value of such improvements assessed in their favor and the payment made for the same and judgment for the same before they are deprived of the possession of the said lands or any such of the improvements; and this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

7

Fourth Plea.

And, for a further plea in this behalf as to the said supposed ejectments above complained of by said plaintiff, the said defendants, by leave of the court first had and obtained, according to the form of the statute in such case made and provided, *saith* that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said defendants were not guilty of the said several supposed trespasses and ejectments or any of the trespasses or ejectments laid to their charge, in manner and form as the same are charged and set forth in the said petition of the said plaintiff and complained against them, at any time within

ten years next before the commencement of this suit; and this the said defendants are ready to verify; wherefore they pray judgment of the said plaintiff if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

M. W. MILLS,
Attorney for Defendants.

And afterwards, to wit, on the 30th day of August, A. D. 1883, the said plaintiff, by his attorneys, filed in said clerk's office his
8 replication; which said replication is in the words and figures as follows, to wit:

Replication.

In the District Court, County of Mora. August Term, 1883.

WILLIAM PINKERTON *vs.* JULIAN LEDEUX *et al.*

And the said plaintiff, as to the said plea of the said defendants by them secondly above pleaded, says, *precludi non*, because he says that the said defendants do not have title to the said premises acquired by any conveyance founded on any entry upon said lands and premises, nor have they any title acquired by them by any grant from the United States or under the laws of the United States, and that no valuable improvements have been by said defendants or their pretended grantors erected or built or placed on said lands or premises, such as is stated in said plea, prior to the commencement of this action, of any value whatever; and if they had defendants would have no right and could not prove the value of such improvements in this action; and of this said plaintiff puts himself upon the country, &c.

CATRON, THORNTON & CLANCY,
Attorneys for Plaintiff.

And said defendants doth the like.

M. W. MILLS,
Attorney for Defendants.

And, as to the said third plea of the said defendants by them thirdly above pleaded, the said plaintiff says, *precludi non*, because he says that before the commencement of this action the said defendants had not built or erected or made any other valuable improvements upon the said land described, consisting of dwelling-houses, outhouses, barns, stables, corrals, fences, or ditches or anything else of any value whatever, as in said plea stated, and that said plaintiff is not liable to pay the value of any such alleged or pretended improvements in full, nor does the full value thereof attach to the said
9 land as a lien upon the same, nor are said defendants entitled to have the value of any such alleged improvements assessed in their favor or payment made for the same or any judgment for the the same before they are deprived of the land or of said alleged improvements; and this the plaintiff prays may be inquired of by the country, &c.

CATRON, THORNTON & CLANCY,
Attorneys for Plaintiff.

And said defendants doth the like.

M. W. MILLS,
Attorney for Defendants.

As to the said fourth plea of the said defendants, plaintiff says, *precludi non*, because he says that the defendants were guilty of the said trespasses and ejectment laid to their charge, in manner and form as alleged against them, within the said ten years next before the commencement of this suit; and this the plaintiff prays may be inquired of by the country, &c.

CATRON, THORNTON & CLANCY,
Attorneys for Plaintiff.

And said defendants doth the like.

M. W. MILLS,
Attorney for Defendants.

And afterwards, to wit, at a regular term of the district court of the first judicial district of the Territory of New Mexico, begun and held within and for the county of Colfax, for the trial of causes arising under the laws of said Territory, at the court-house of said county, in the town of Cimarron, on the first Monday after the fourth Monday of March, 1882, on the fifth day of said term, the same being Friday, April seventh, 1882, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

Order Changing Venue.

WILLIAM PINKERTON *vs.* JULIAN LEDEUX *et al.*

Ejectment.

By agreement of the said parties, by their respective attorneys, it is ordered by the court that the venue of this cause be, and the same hereby is, changed to the county of Mora, without prejudice to the right of either of the parties to apply for a second change of venue, and that the clerk of this court be, and he hereby is, directed to make a full and true transcript of all journal entries of proceedins had herein, and to transmit the same, together with all the original papers on file, to the clerk of the district court in and for the county of Mora.

And afterwards, to wit, at a regular term of the district court of the first judicial district of the Territory of New Mexico, begun and held within and for the county of Mora, for the trial of causes arising under the laws of said Territory, at the court-house of said county, in the town of Mora, on the first Monday of April, in the year 1884, on the ninth day of said term, the same being Wednesday, April 16th, A. D. 1884, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

Dismissal as to Julian Ledoux.

WILLIAM PINKERTON *vs.* JULIAN LEDOUX *et al.*

Ejectment.

Now comes the said plaintiff, by his attorney, F. W. Clancy, Esq. and says to the court that he will not further prosecute his said suit as to said defendant, Julian Ledoux, but as to him dismisses the same. It is therefore considered by the court that said defendant, Julian Ledoux, go hence without day and recover of said plaintiff his costs in this behalf expended, to be taxed, and that he have execution therefor.

And afterwards, to wit, at the term aforesaid of said court, and on the day and year last aforesaid, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

Record of Trial.

WILLIAM PINKERTON *vs.* EPIFANIO LEDOUX.

Ejectment.

Now comes the said plaintiff, by his attorney, F. W. Clancy, Esquire, and the said defendant comes, by his attorney, M. W.
11 Mills, Esquire, and issue having been heretofore joined between said parties, thereupon comes a jury, to wit, Charles Bowmer, Jose Mascarenas, Francisco Manzanares, M. Medina, Jose Montoya, Antonio Romero, Bernardo Salazar, A. Trujillo, A. Vigil, Matias, Martinez, Esquipulo Trujillo, Virginio Fresquez, twelve good and lawful men of the body of the county, who, being duly sworn the truth to speak upon the issues joined between said parties, after hearing the evidence, the arguments of counsel, and the instructions of the court, upon their oaths aforesaid do say that they find the defendant not guilty; and thereupon the said plaintiff, by his attorney, gives notice of a motion for a new trial.

And afterwards, to wit, on the tenth day of the aforesaid term, the following, among other, proceedings were had, to wit:

Motion for New Trial, Denial, and Judgment.

WILLIAM PINKERTON *vs.* EPIFANIO LEDOUX.

Ejectment.

Now again comes the said plaintiff, by his attorney, F. W. Clancy, Esq., and moves the court to set aside the verdict heretofore rendered in this cause and to grant him a new trial herein for reasons set forth in his motion on file; and said motion being submitted to the court without argument, the court, being sufficiently advised in the premises, denies the same. It is therefore ordered by the court that said motion be, and the same hereby is, denied. Thereupon, in

accordance with the verdict heretofore entered herein, it is considered by the court that said Epifanio Ledoux go hence without day and recover of said plaintiff his costs in this behalf expended, to be taxed, and that he have execution therefor; and it is ordered by the court that said plaintiff be, and he hereby is, given ninety days in which to file his bill of exceptions herein.

12 And afterwards, to wit, on the 30th day of October, 1884, the said plaintiff, by his attorneys, filed in said clerk's office his bill of exceptions; which said bill of exceptions is in the words and figures following, to wit:

Bill of Exceptions.

In the District Court, County of Mora. April Term, 1884.

WILLIAM PINKERTON *vs.* EPIFANIO LEDOUX.

Ejectment.

Be it remembered that at the regular April term, 1884, of said court, begun and held within and for the county of Mora, on the first Monday of April, 1884, and on the ninth day of said term, the same being the 16th day of April, 1884, the above-entitled cause coming on for trial and a jury having been empaneled, evidence was then introduced as follows:

Charles H. Fitch, a witness on behalf of plaintiff, being duly sworn, testified as follows:

My name is Charles H. Fitch. I live in Santa Fé. I am a draughtsman in the surveyor general's office. I have not charge of the records in that office. I am familiar with the files and records of that office. I have brought here with me all the papers relative to the Nolan grant which the chief clerk gave me. Papers relative to grants are kept in the safe in the office, and field-notes and plats are kept in other parts of the office. The chief clerk is David J. Miller. He is in charge of the files of the office. These grant papers which I have here were taken from the safe; that safe is the usual place where such papers are kept in that office.

Plaintiff then offered in evidence the original petition, the grant by Governor Armijo, and the act of juridical possession, which were not objected to, but were admitted in evidence, and were read to the jury, and were and are in the words and figures following, to wit:

SELLO TERCERO. (SELLO.) UN PESO.

Anos de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

13 Exmo. Sor. Gobor.—El C. Gervacio Nolan y socios, oriundo del Canadad, casado, de religion cristiana (A. y R.) vecino del Real del Oro, en San Francisco del Tuerto, ante la venevolencia de V. E. como mas en derecho haya lugar y al nuestro convenir

pueda salvando las protestas utiles y necesarias, comparezco y digo Sor. Que por cuanto he observado en este departmento muchos terrenos baldios y a manos muertas que con su cultura pudieran ser provechosos a los habitantes del pais y deceando tener en que ocupar una numerosa familia que tengo, he encontrado en el canonsito del Rio Colorado, un terreno valdio, yerto y despoblado y sin perjuicio de tercero, el que esta situado hacia el sur de la posesion de los Senores Miranda y Beaubien, el que, en nombre de nuestros supremos poderes de la nacion Mejicana, impetramos de la benignidad de V. E. se sirva el concedernos la gracia de darnos por posecion dicho terreno demarcandosenos por limites, por el norte la posecion de los Senores dichos Miranda y Beaubien, por el sur una legua en linea recta quedando dentro del rio del Sapello segun su cordillera, por el oeste otra legua del mismo Rio Colorado y su cordillera, y por el sud-este los serritos de Santa Clara con su cordillera hasta el canoncito de Ocate, es de alvertir que el dicho torreno tieno muy poco de labranza, pero lo que interesa mas de el, es poner cria de ganados mayores y menores y de caballada, y para que V. E. se penetre mas de mis intenciones que son sanas, dare una corta relacion respecto a mi conducta que es claro y evidente que haciendo merito puede hacerseme esta gracia, pues que hace viente y tres anos que residuo en este pais y en he prestado cuantos servicios he side ocupado en veneficio de la patria como son campanas, corredurias contribusiones y demas; y por lo tanto imploro el aucilio de V. E. para que se sirva favoresernos con esta concepcion, Por todo lo cual.

A S. E. Rendidamente pedimos y supplicamos sea bien servido acseder a esta nuestra solistud en lo que recibibiremos mer-
14 ced y gracia que impetramos juramos la buena fe, protestando constas y lo necesario &a.

Real de San Francisco en el Tuerto Nove. 15 de 1845.

GERVACIO NOLAN.
JUAN ANTONIO ARAGON.
ANTONIO MARIA LUCERO.

Santa Fé, Noviembre 18 de 1845.

En vista de la carrera de meritos tan analogos que manifiesta el suplicante y socios, he tenido a bien consederle el terreno que solisita en nombre del supremo Gobno. de la nacion Mejicana y haciendo merito este Gobno. de todo lo referido y servicios que ha hecho a la patria el mismo, he venido en cosederle segun las facultades se me confieran por las leyes, el sitado terreno con los limites y egidos que pide: libre de senso y franco de pension, por lo cual pase el suplicante al juez de paz de lo Demora para que lo ponga en posesion y haga la escritura correspondiente.

MANUEL ARMIJO.

En el puesto de lo de Mora a los treinta dias del mes Noviembre de mil ochocientos cuarenta y cinco anos: yo el Juez de Paz ciudo. Tomas Benito Lalanda y los testigos de mi assistencia con quienes actue por receptoria a falta de escribano publico que no lo hay segun

dro. en justo obedesimiento al superior decreto del Exmo. Sor. Gobor. puesto al marjen fecha 18 de Noviembre del corriente ano, de la presentacion que hizo el ciudo. Gervacio Nolan y sosios y a virtud de la concepcion del terreno que se solisita pase acompanado con los testigos mensionados y estando presente el intersado, le hize ver la peticion que hacia, y a las reglas y condiciones a que se debia de sugetar segun la costumbre del pais con respecto a la colonizacion, por lo que habiendo quedado entendido en todo lo que se le propuso, le tome por la mano y lo pase por dichas tierras en donde arranco sacates, tiro piedras, dando voces de alegria diciendo ; viva el soberano congreso constitucional de la union, tomando posesion del mencionado terreno quieta y pacificamente y sin perjucio de tercero ni del nacional haber de la nacion Mejicana, igualmente se le senalaron los linderos de la dicha posecion : son por el norte con el sitio de D. Guadalupe Miranda y Dn. Carlos Bobian, por el sur una legua al sur del Rio del Sapello siguiendo la misma cordillera, por el oriente una legua al oriente del Rio Colorado, con la misma cordillera del rio ; y por el poniente el canonsito de Ocate, y al poniente quinientas varas de los serritos de Santa Clara a linea recta.

Advirtiendo que los pastos y abrevaderos son comunes para todos los peticionarios atendiendo que dicha se da en los mismos terminos que se pide siendo libre y franca de toda pensien tambien de todo senso, tributo hipoteca u otra enagenacion para que libremente gozen el terreno ellos, sus hijos, herederos y subsesores sin que haiga quien les ponga embarazo alguno en ningun tiempo y si alguna persona se lo pusiere, que no sea oido en juicio ni fuera de el, siendo esto como santencia pasada consentida ni apelada ; y a si mismo se les da la presente posesion ad litem para todos sus usos, y para que el presente documento de merced tenga la fuerza y validacion que el derecho previene, interpongo la autoridad que me es conferida firmando para su constancia con los de assistencia de que doy fe.

TOMAS BENITO LALANDA.

Assistencia :
CRESTINO TAPIA.
SEVERIANO GOMES.

Derechos sin el papel 25 pesos, lo juro.

The following is a true translation of said petition, grant, and act of possession, to wit :

SEAL THIRD. (SEAL.) ONE DOLLAR.

Years eighteen hundred and forty-four and eighteen hundred and forty-five.

Most Excellent Governor :

The Citizen Gervace Noland and associates, natives of Canada, married, of the Christian religion (R. & A.), residents of the Real del Oro, in San Francisco del Tuerto, before the benevolence of your

excellency, in the best manner provided by law and most
16 convenient to us, reserving such protests as may be useful and necessary, appears and states, sir, that whereas I have observed in this department there is a great deal of vacant land, and under mortmain that, being cultivated, would be beneficial to the inhabitants of the country, and, desiring to furnish occupation for a large family, I have found a piece of land in the little cañon of Red River vacant, unpopulated, and uncultivated, and without damage to any third party, being situated to the south of the possessions of Messrs. Miranda and Beaubien, which, in the name of our supreme powers of the Mexican nation, we solicit from the benignity of your excellency to be pleased to grant us the favor of giving us the possession of said land, marking out to us as its boundaries on the north the possession of said Messrs. Miranda and Beaubien; on the south one league in a direct line, including the Sapello river, according to its current (corrillera); on the west another league from Red River and its current, and on the southeast the little hills of Santa Clara with their range to the little cañon of the Ocate. It is to be observed that a very small portion of said land is susceptible of cultivation, but what is more important is to establish the raising of horned cattle, sheep, and horses; and in order that your excellency be more fully informed of my intentions that they are pure I will make a short report of my conduct, which, being plain and evident, its merits may secure this grant to me, as I have resided in this county for twenty-three years, and I have rendered services whenever called upon for the benefit of the nation, such as campaigns, express contributions, &c.; I therefore implore the assistance of your excellency that you be pleased to favor us with the grant. In view of all which we humbly pray and request your excellency to grant our petition by which we will receive the grant and favor we impetrate. We swear to our good faith, protesting costs, and whatever may be necessary, &c.

Rial de San Francisco en el Tuerto, November 15, 1845.

17 GERVACIO NOLAN. [RUBRIC.]
JUAN ANTONIO ARAGON. [RUBRIC.]
ANTONIO MARIA LUCERO. [RUBRIC.]

SANTA FÉ, *November* 18*th*, 1845.

By virtue of the career of merit so analogous, as represented by the petitioner and his associates, I have seen proper to grant the land petitioned for in the name of the supreme government of the Mexican nation and this government. In consideration of the above and the services he himself has rendered to the nation, I have seen proper to grant unto him the aforesaid land, with the boundaries and limits he asks for, by virtue of the authority in me vested according to law, free from all tax and tribute; therefore the petitioner will present himself to the justice of the peace of De Mora that he may put him in possession and execute the necessary documents.

MANUEL ARMIJO. [RUBRIC.]

In this place of Lo de Mora, on the thirtieth day of the month of November, in the year one thousand eight hundred and forty-five, I, the justice of the peace, Citizen Tomas Benito Lalanda, and my attending witnesses, with whom I acted by appointment, in the absence of a notary public, there being none, according to law and in obedience to the supreme decree of the most excellent Governor, as contained in the margin, dated the 18th of November of the present year, in reference to the petition made by Citizen Gervacio Nolan and associates, and by virtue of the grant of land which he solicits, I proceeded in company with the aforesaid witnesses, and, the party interested being present, I showed him the petition made by him and the rules and conditions to which he should conform, according to the custom of the country in regard to colonization, and having informed himself of all that was proposed to him, I took him by the hand and walked him over said land, where he pulled up grass, threw stones, and cried, with joy, long life to the sovereign constitutional Congress of the Union, taking possession of 18 said land quietly and peacefully, without injury to any third party or to the national credit of the Mexican nation. He was at the same time pointed out the boundaries of said possessions. They are, on the north, the lands of Don Gaudalupe Miranda and Don Carlos Beaubien; on the south, one league south of the Sapello river, following the same range; on the east, one league east of Red River, with the same range of the river, and on the west the little cañon of Ocate and five hundred varas west of the little hills of Santa Clara, in a direct line, it being understood that the pastures and watering places are for all the petitioners in common, and that the said grant is made in conformity to the petitions, being free from all pensions; also from all tax, tribute, and mortgage or other incumbrance; that they, their children, heirs, and successors, may enjoy said lands without being in anywise molested by any person at any time, and if they should be disturbed by any person that he be not heard in court or out of it, this being equal to a judgment rendered, agreed to, and not appealed, and the possession is in like manner given to him *ad litem* for all purposes; and in order that the present deed of grant may have all the force and validity the law requires, I interpose the authority conferred upon me. Signed in order that it may appear with those in my attendance; to all of which I certify.

TOMAS BENITO LALANDA. [RUBRIC.]

Attending:

CRESTINO TAPIA. [RUBRIC.]

SEVERIANO GOMES. [RUBRIC.]

Fees, without the paper, twenty-five dollars. I swear it. [RUBRIC.] —— ——.

Plaintiff then offered in evidence the opinion of the surveyor general reporting on the grant in question, which was not objected to, and was admitted in evidence and read to the jury, and was and is in the words and figures as follows, to wit:

Claim of the Heirs of Gervacio Nolan.

19 This case was set for trial on the 4th day of April, 1860, and the parties appearing, the evidence presented by them was taken and the case duly investigated.

On the 15th November, 1845, Nolan, in company with Juan Antonio Aragon and Antonio Maria Lucero, petitioned the Governor of the department of New Mexico for a grant to a tract of land situated in what is now the county of Mora, embraced within the boundaries set forth in the petition. After setting forth that he is a naturalized citizen of the Republic and entitled to all its privileges and benefits, he refers to the services he has rendered the country in expeditions against the Indians, &c.

On the 18th of November of the same year, Manuel Armijo, the civil and military Governor of New Mexico, vested with extraordinary powers by the supreme government as a recompense for the services he had rendered to his adopted country, granted him the land asked for, with the boundaries set forth in the petition, and directs him to apply to the proper officers to be placed in legal possession of the land so granted, as provided by law. This was done on the 30th day of the same month and year by Tomas Benito Lalanda, a justice of the peace of the precinct of Mora, as appears by his certificate attached to the original, as well as by his testimony, which is filed with the papers in the case. After possession was given to Noland and his associates it was found that a portion of the land granted to him was covered by the grant made in 1835 to the town of Mora, and, upon application to the town authorities, the land so covered was surrendered by the consent of the residents of the town to the said Noland, as will appear by the written statement to that effect also filed with the papers in the case.

The claimants also filed deeds of conveyance from Antonio Aragon and Antonio Maria Lucero to the said Noland of all their rights, title, and interest in said grant for the consideration therein mentioned.

20 The papers filed in the case are all originals and, upon comparison with others of a like nature in this office, are believed to be genuine.

The grant purports to have been made as a remuneration or recompense for services rendered to the country in time of need, which is believed and is so held by the courts of the country to be a sufficient consideration to sever the lands from the public domain and vest the title in the claimant.

It is fully sustained by the decision of the Supreme Court of the United States in similar cases, as well by the precedent established by Congress in the ratification or confirmation of other cases acted upon by this office, and is fully covered by the stipulation of the treaty of Guadalupe Hidalgo of February, 1848.

Deeming it to be a good and valid grant, and that the land embraced within the boundaries set forth in the petition and juridical possession to be severed from the public domain and the title there-

for vested in the heirs and legal representatives of Gervace Nolan, it is hereby approved and transmitted for the action of Congress in the premises.

WILLIAM PELHAM,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *July* 10, 1860.

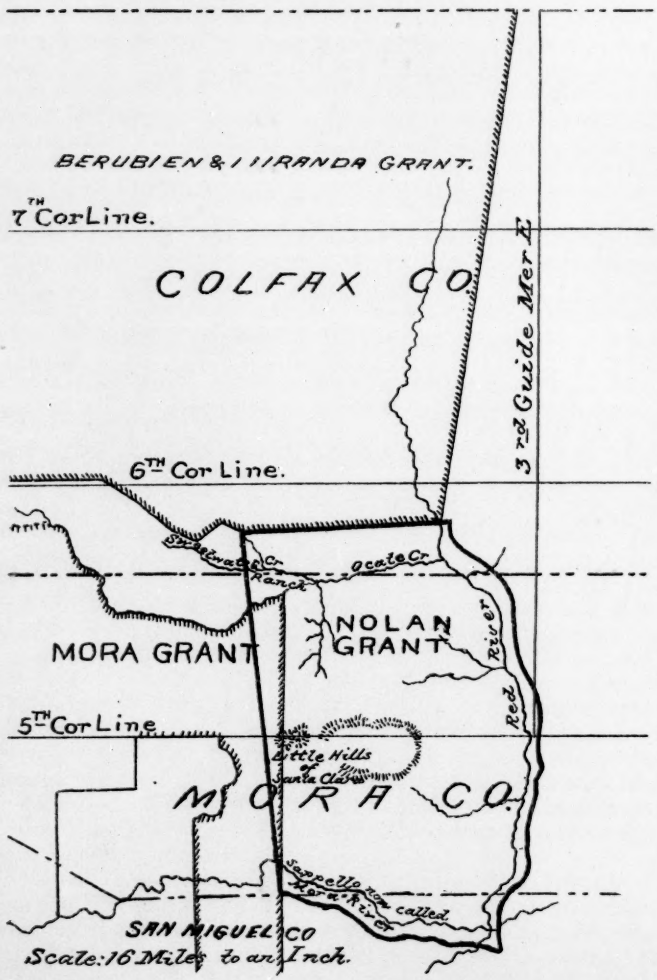
Plaintiff offers in evidence the petition of the claimants to the grant, addressed to the surveyor general, for the purpose of showing what the boundaries were which the surveyor general had in view when he examined the case, and to which he referred in his opinion reporting favorably on the grant. Defendant objects to the admission of said petition and the court sustained his objection; to which ruling of the court plaintiff, by counsel, then and there duly excepted, said petition being in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, *County of Santa Fé:*

21 The undersigned, Hernando Nolan, Eugenio Nolan, Maria Leonor Nolan, and her husband, Alverto; Maria Martina Delgado, and Maria Erinea Delgado, minors under the age of twenty-one (by their guardian, Pablo Delgado), Antonio Nolan and Francisco Nolan, also minors (by their guardian, Maria de los Dolores Lalanda), heirs of Gervacio Nolan, late of the county of Taos, in said Territory, deceased, and Maria de los Dolores Lalanda, in her own right as widow of said Gervacio Nolan, would respectfully represent to the surveyor general of New Mexico that under the act of the Congress of the United States of America, approved July 22, A. D. 1854, establishing the office of surveyor general of New Mexico, etc., they herewith file for adjudication and confirmation in the office of the said surveyor general a grant to a certain tract of land situate, lying, and being in the county of Mora, in said Territory, and made and conceded to said Gervacio Nolan by Manuel Armijo, formerly Governor of said Territory, dated at Santa Fé on the eighteenth day of November, A. D. 1845, by virtue of the authority then vested in him, as such Governor, by the supreme government of Mexico and by the laws of that Republic giving power to the governors of departments to make grants of lands to individuals, the evidence of which is to be found in the general recopilation of the Indies, the collection of decrees of the Mexican government, and original communications from the officers of the supreme government of Spain and Mexico to the executive officers of the Territory, which communications are on file in the archives of the said Territory, and to which reference is here made.

The said tract or parcel of land is bounded as follows: On the north by lands granted to Guadalupe Miranda and Charles Beaubien; on the south, one league south of the river Sapello, following said stream one league to the east; on the east, following the hills on the eastern side of the stream of the Rio Colorado one league,

William Pinkerton
vs.
Epifanio Ledoux
} No. 385. Fol. 23.



and on the west by a line from the northern boundary run-
22 ning southerly through the canoncito of Ocate, and from thence to a point five hundred varas west of the little hills of Santa Clara, in a direct line.

The undersigned would further represent that said tract of land was duly granted to said Gervasio Nolan and two others; that at the time of the making of said grant said Gervasio was a naturalized citizen of the Mexican Republic, duly naturalized according to the laws of said Republic; that his naturalization papers, duly authenticated, were consumed in a conflagration at Marysville, California, but that proof of their existence will be produced if deemed necessary; that said Gervasio Nolan has been dead some two years, and that he died intestate, and the undersigned are his sole heirs-at-law; that previous to his decease he purchased all the right, title, and interest of his said two associates, as will appear by their deeds of sale, to be produced whenever required; that said tract of land is situated in said county of Mora, in said Territory, and they are not aware of any conflicting claims to the possession of the same, and that they cannot furnish a formal plat of survey, because no survey was made at the time of the delivery of possession of said grant to said Gervasio Nolan, nor has any since been made to their knowledge.

Santa Fé, New Mexico, February 27, 1860.

THEODORE D. WHEATON,
Attorney for the Above-Named Heirs.

Plaintiff introduces in evidence a map from the surveyor general's office, which said map was shown and explained to the jury, the court, however, stating that the map was not admitted as evidence of the boundaries of the grant in question, nor to show any survey thereof, but only to inform the jury as to the location and position of natural objects and course of streams referred to in other documents and testified to by witnesses, of which said map the following is a true copy.

(Here follows diagram marked p. 23.)

24 Mrs. MARY MCKELLAR, being duly sworn as a witness on behalf of the plaintiff, and examined by Mr. CLANCY, testified as follows:

I live at Sweet Water, in Colfax county. (Witness here pointed out on the map already in evidence the locality where she lives, the same being near the northwest corner, and marked "Ranch" on the said map.) I know Mr. Ledoux very well. I am acquainted with the land in question in this suit. It is about a mile and a half to the northeast of where we live. The defendant has a house and lives there. (Witness here points out on the map already referred to where defendant's house is, locating the same at a point northeast from her own house, already referred to.) He lives south of the Gonzalites Mesa. I have seen the fence where the boundary of

the Beaubien and Miranda grant runs. Defendant's house is two or three miles south of the fence which marks said boundary. I know where all of these stones are put by Mr. Shaw as the western boundary of the Nolan grant. He was the surveyor sent up from Santa Fé to survey the land. Mr. Ledoux's house is to the east of that line, as surveyed by Mr. Shaw. I know where the little hills of Santa Clara are and where the canoncito of the Ocate is. I have followed the surveyor's stones from the canoncito of the Ocate to the Gonzalites Mesa, and the house of Mr. Ledoux is fully a mile east of that line. To the best of my belief, that line is a continuation of a line drawn from a point five hundred varas west of the little hills of Santa Clara to the canoncito of the Ocate. Defendant has lived there ever since I first came to the country—four years and a half ago.

Cross-examination by Mr. MILLS:

Question. Now, Mrs. McKellar, do you know the land in question?

Answer. Yes; I know the land he claims.

Q. What land is it?

A. It is the land claimed on the Nolan grant. I do not know the quantity he claims. I cannot say whether he claims more than where his house stands.

Q. Do you know if he is the owner of that house?

25 A. I believe he put the house up. I don't know whether Ledoux ever lived there or not. Defendant lived about a mile and a half to the northeast of our ranch, on the Sweet Water. We don't live on the same arroyo. I was there at the time Mr. Shaw put those stones up. I did not see him put them in the ground, but I followed his tracks in the snow two days afterwards, and I could see them as far as the canoncito. I did not follow them to Santa Clara, but only to the canoncito. They crossed the canoncito of the Ocate just where the western boundary of the mesa touches the ground.

Q. How many cañons of the Ocate are there?

A. There is only one that I know of.

Q. Do you know whether that line is straight?

A. Yes; as far as I can tell.

Q. Do you know whether it starts five hundred varas west of the Santa Clara hills?

A. No; I have never been to the stones west of Santa Clara. I have not been over the whole line. Defendant is on the eastern side of the line. Defendant lives northeast from where the cañon opens. The arroyo where defendant lives we have always called "Ledoux's arroyo." Mr. Davis lives on it, down where it joins the vega.

EPIFANIO LEDOUX, being duly sworn as a witness on behalf of the plaintiff, and examined by Mr. CLANCY, testified as follows:

I am the defendant in this case. I know the land for which this suit is brought. I was in possession of that land on the 20th of July, 1881. I live there.

Cross-examination by Mr. MILLS:

Q. Do you know what land he is talking about?
A. Yes, sir.
Q. You mean to say that you are in possession of the whole grant?
A. No, sir.

WILLIAM PINKERTON, being duly sworn as a witness on behalf of the plaintiff, and examined by Mr. CLANCY, testified as follows:

26 I am the plaintiff in this case. I know where the land in question is. I know where the little hills of Santa Clara and the canoncito of the Ocate are. Beginning at a point five hundred varas west of the little hills of Santa Clara and running a straight line through the canoncito of the Ocate, and continuing it beyond in a straight line, the house where defendant lives would be to the east of that line. I am well acquainted with that section of country.

Cross-examination by Mr. MILLS:

Q. How long have you lived in this country?
A. I came here first in 1875; for the first two or three years I was here occasionally; for the last six or seven years I have been here steadily.
Q. Then you mean to say that these points of which you testified are those which have been known as such since you have been here?
A. Certainly.
Q. How many cañons on the Ocate?
A. I don't know.
Q. Is there more than one?
A. I have no doubt there are, but I never saw but one.
Q. Don't you know that the Ocate runs into a cañon where it runs into the Red River?
A. I have not been there, so I have not seen it.
Q. Did you never see the canoncito at the town of Ocate?
A. No, sir.
Q. Have you been at the town?
A. Yes, sir; but I saw no canoncito.
Q. Where does the canoncito start?
A. I don't think it is very difficult to tell where it starts, although it starts very gradually.
Q. When it comes out don't it open very gradually?
A. The line crosses the Ocate where the cañon opens on the plains; there is no cañon or hills below that point.
Q. From this arroyo to the Santa Clara hills how far is it?
27 A. Ledoux's house is at the second mile-stone ~~east~~ from the Gonzalitas Mesa, about a mile and a half to the east of that line, and it is about seventeen miles from the Santa Clara hills and about five miles and a half from the canoncito of the Ocate.

Redirect examination by Mr. CLANCY:

Q. Mr. Pinkerton, where is this land?
A. In Colfax county, New Mexico.

Redirect examination by Mr. MILLS:

Q. How do you know?

A. Because I have assisted in surveying the line between the counties of Colfax and Mora; it passes in a direct line east and west in the centre of township 23 north. I have examined the stone which marks the centre of the township, holding in my hand the field-notes of the survey made by Mr. Taylor and furnished to me by the land office in Santa Fé. I started in the first instance from a stone about a mile and a half to the east of the house of Dr. Michael; he pointed out the line.

Q. Then you know because Dr. Michael found it?

A. No, sir; I identified it by the field-notes of the survey.

Q. Did you see more than one stone?

A. Yes, sir.

Q. You didn't start from more than one, did you?

A. No, sir.

Q. You ran on the middle of the township?

A. Yes, sir.

Q. How far did that leave Ledoux in?

A. About three miles in Colfax county; two miles and a half, at all events.

Plaintiff then offered in evidence deeds to show his title, when defendant, by his counsel, stated to the court and to the jury that he admitted that plaintiff had acquired and now had all the right and title of the original grantees in and to the western one-half of that portion of the grant in question, lying north of a line running
28 east and west across said grant, through the Santa Clara hills.

Plaintiff here closed his case.

And thereupon said defendant introduced in evidence a map to show the various localities, position of natural objects, and courses of streams, &c., referred to in the evidence already given, which map, on these points, showed substantially the same state of facts as the map already introduced.

The foregoing was all the evidence introduced on the trial of said cause.

The plaintiff then requested the court to instruct the jury as follows:

"That when a claim to a Spanish or Mexican grant has been favorably reported by the surveyor general of New Mexico, as the one here in question has been, the grantees or their heirs or assigns are entitled to the absolute and exclusive possession of the land embraced within the limits of such grant, and in this case it is admitted that the plaintiff has all the right, title, and interest of the original grantees to all that portion of said grant north of an east-and-west line running through the serritos de Santa Clara and west of a northwest and southeast line half-way between the east and west boundaries of said grant."

And the court refused to give said instruction; whereupon the

said plaintiff then and there excepted to the ruling and decision of the court in refusing to give said instruction.

The court then instructed the jury as follows:

GENTLEMEN OF THE JURY:

1. You must be satisfied by a preponderance of evidence that defendant is within the boundaries petitioned for by Nolan, and into which he was inducted by the writ of possession, and unless you are so satisfied you must find defendant not guilty. You must determine what these boundaries are from the words used in the petition and in the writ of possession. If, from the description thus given, and from the extraneous evidence furnished by plaintiff, you are not convinced that the defendant is upon the land petitioned for and given by writ of possession to the said Nolan, you must find defendant not guilty. If, upon the other hand, you are satisfied from all the evidence that defendant is upon said land, you must find him guilty. The words used in Nolan's petition to describe the boundaries of the grant are as follows: "Por el Norte." The Maxwell grant. "Por el sur una legua en linea recta quedando dentro del rio del Sapello segun su cordillera." "Por el oeste otra legua del mismo rio Colorado y su cordillera y por el sudeste los serritos de Santa Clara con su cordillera hasta el canoncito de Ocate." These are the words of description used by Nolan in his petition. The words and description given in the writ of possession are as follows: "El Norte," as above, the Maxwell or Beaubien and Miranda grant. In this respect the descriptions are the same. "Por el sur, una legua al sur del rio Sapello, siguiendo la misma cordillera." "Por el oriente una legua al oriente del rio Colorado con la misma cordillera del rio y por el poniente el canoncito de Ocate y al poniente quinientas varas de los serritos de Santa Clara a linea recta." If, upon comparing these descriptions, you cannot make them agree, you must give the greater weight to the words and descriptions of the petition, for the petition must control the writ. In other words, the writ of possession must conform to the petition, for the grant was made according to the boundaries prayed for in the petition. You would not be justified in going 500 varas west of Los Serritos de Santa Clara for the western boundary of the grant unless you find some authority for doing so in the words and descriptions of the petition. If, from the descriptions and words in the petition and writ of possession, you find yourselves unable definitely to locate the boundaries of the grant you must find defendant not guilty.

2. That if they believe from the evidence that the land of which the defendant is in possession is within the limits of the grant, which has been favorably reported by the surveyor general, they must find the defendant guilty.

3. The plaintiff can only recover, if at all, on the strength of his own title or right of possession, and not on the defects of any title or right of possession of defendant.

4. The plaintiff must establish his right to the possession of the land described in the petition or declaration by competent evidence in order for him to recover.

5. In order to find the defendant guilty you must find that the defendant did enter upon the land described in the petition or declaration; that the same is within the boundaries of the portion of the grant claimed by plaintiff, and that the defendant was, at the time this suit was instituted, in possession of the same wrongfully, withholding and detaining the same from the plaintiff.

Which were all the instructions given by the court; and the plaintiff then and there duly excepted to the giving of each of said instructions, with the exception of the one given at the request of plaintiff, which is contained in paragraph numbered 2.

And afterwards, on the seventh day of April, 1884, the said plaintiff, by his attorney, made a motion for a new trial in said cause; which said motion is in the words and figures following, to wit:

In the District Court, County of Mora. April Term, 1884.

WILLIAM PINKERTON *vs.* EPIFANIO LEDOUX.

Now comes said plaintiff, by his attorneys, and moves the court to set aside the verdict heretofore rendered in this cause, and to order a new trial herein for the following reasons:

1. Because said verdict is contrary to the evidence.
2. Because there is no evidence to support said verdict.
3. Because the court erred in excluding proper evidence offered on behalf of plaintiff.

31 4. Because the court erred in refusing to instruct the jury as requested by plaintiff.

5. Because the court erred in instructing the jury as requested by defendant.

6. Because the court erred in instructing the jury in substance that if there were any conflict between the boundaries of the grant in question, as set out in the original petition of the grantees for said grant and as set out in the act of juridical possession, the original petition must govern and the act of juridical possession must be subject to that petition.

Because the court erred in giving other improper instructions to the jury.

CATRON, THORNTON & CLANCY,
Attorneys for Plaintiff.

Which motion being submitted to the court, the court denied the same; whereupon the said plaintiff, by his said counsel, then and there duly excepted to the decision of the court in overruling said motion for reasons apparent on the face thereof and upon the record in said cause.

And because the foregoing matters are not of record in said cause the said plaintiff prays that this his bill of exceptions containing the same may be signed, sealed, and made a part of the said record, which is accordingly done this — day of June, 1884.

S. B. AXTELL,
Chief Justice.

And I further certify that the foregoing record contains the pleadings and so much of the proceedings in said cause as are material to a review of said cause in the supreme court.

S. B. AXTELL,
Chief Justice.

32 *Clerk's Certificate.*

TERRITORY OF NEW MEXICO,
First Judicial District, County of Mora:

I, C. M. Phillips, clerk of the district court within and for said district, county, and Territory, certify that the foregoing twenty-nine pages contain a true transcript of the proceedings in said cause as the same are of record in my office.

Witness my hand and the seal of said court this 15th day of November, 1884.

[Seal First Judicial District Court, N. M.]

C. M. PHILLIPS, *Clerk.*

And afterwards, to wit, on the 10th day of December, 1884, there was filed in the clerk's office of said supreme court the said plaintiff in error's assignment of errors; which said assignment of errors is in the words and figures following, to wit:

Assignment of Errors.

In the Supreme Court. January Term, 1885.

WILLIAM PINKERTON *vs.* EPIFANIO LEDOUX.

Error to Mora county.

33 Now comes said plaintiff and says that there is manifest error in the record and proceedings in said cause in the court below, in this:

First. That the verdict is directly contrary to the evidence.

Second. That the court erred in refusing to give the instruction asked by plaintiff. (Page 26 of printed record.)

Third. That the court erred in instructing the jury, without any reservation or exception, that the original petition for the Nolan grant must control the writ or act of juridical possession. (Pages 26–'7 of printed record.)

Fourth. That the court erred in instructing the jury that they must determine what the boundaries of said grant were from the words used in the petition and in the writ of possession. (Page 26 of printed record.)

Fifth. That the court erred in instructing the jury that if, upon comparing the description given in the original petition and
34 in the act of juridical possession, they could not make them agree, they must give greater weight to the words and description of the petition. (Page 27 of printed record.)

Sixth. That the court erred in instructing the jury that they would not be justified in going five hundred varas west of Los Ser-

ritos de Santa Clara for the western boundary of the grant unless they found some authority for doing so in the words and descriptions of the petition. (Page 27 of record.)

Seventh. That the court erred in instructing the jury that if, from the descriptions and words in the petition and writ of possession, they were unable definitely to locate the boundaries of the grant they must find defendant not guilty. (Page 27 of record.)

Eighth. That the court in effect submitted to the jury the question of the validity of the grant which had been favorably reported by the surveyor general. (Page- 26–'7 of record.)

35 Ninth. That the court, in effect, took away from the consideration of the jury the act of juridical possession.

Wherefore said plaintiff prays that said judgment be reversed, annulled, and altogether held for naught and this cause remanded to the court below with directions to order a new trial herein.

CATRON, THORNTON AND CLANCY,
Attorneys for Plaintiff.

On which said assignment of errors is the following endorsement, to wit: William Pinkerton, plaintiff in error, *vs* Epifanio Ledoux, defendant in error. Assignment of errors. Filed in my office this 10th day of December, 1884. C. M. Phillips, clerk.

36 And be it further remembered that on Monday, the fifth day of January, 1885, being the first day of the regular January, 1885, term of the supreme court of the Territory of New Mexico, the following, among other, proceedings were had, to wit:

Order Setting for Argument.

WILLIAM PINKERTON, Plaintiff in Error,
vs.
EPIFANIO LEDOUX, Defendant in Error. } 200.

Error to first district.

The said defendant in error having heretofore filed his appearance in writing, by M. W. Mills, his attorney, it is ordered that this cause be, and the same hereby is, set down for argument at the incoming of court on next Friday morning.

And be it further remembered that on Tuesday, January 6th, 1885, being the second day of said term of said supreme court, the following, among other, proceedings were had, to wit:

Order Sitting for Argument.

WILLIAM PINKERTON, Plaintiff in Error,
vs.
EPIFANIO LEDOUX, Defendant in Error. } 200.

Error to first district.

37 On motion of said plaintiff in error, by his attorney, F. W. Clancy, Esquire, it is ordered by the court that this cause be,

and the same hereby is, set down for argument at the incoming of court on next Monday morning.

And be it further remembered that on Monday, January 26th, 1885, being the nineteenth day of said term of said supreme court, the following, among other, proceedings were had, to wit:

Record of Argument.

WILLIAM PINKERTON, Plaintiff in Error,
vs.
EPIFANIO LEDOUX, Defendant in Error. } 200.

Error to first judicial district, Mora county.

This cause coming on to be heard upon the record, assignment of errors, and briefs filed herein, and being argued by counsel, by F. W. Clancy, Esquire, on the part of said plaintiff in error, and by William Breeden, Esquire, on behalf of said defendant in error, is submitted to the court, and the court, not being sufficiently advised in the premises, takes the same under advisement.

38 And be it further remembered that on Saturday, January 31st, 1885, being the twenty-fourth day of said term of said supreme court, the following, among other, proceedings were had, to wit:

Judgment.

WILLIAM PINKERTON, Plaintiff in Error,
vs.
EPIFANIO LEDOUX, Defendant in Error. } 200.

Error to first judicial district, Mora county.

This cause having been argued by counsel and submitted to and taken under advisement by the court on a former day of the present term, the court, being now sufficiently advised in the premises, announces its decision by Associate Justice Wilson, affirming the judgment of the court below, for reasons set forth in the opinion on file, Associate Justice Bell concurring. It is therefore considered by the court that the judgment herein of the first judicial district court within and for the county of Mora, whence this cause came into this court, be, and the same hereby is, affirmed, and that in accordance therewith the said defendant in error and defendant below
39 go hence without day and recover of said plaintiff in error his costs in this behalf expended, as well in the court below as in this court, to be taxed, and that he have execution therefor.

And afterwards, on, to wit, the 21st day of March, 1885, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a bond in the above-entitled cause, which is in words and figures as follows, to wit:

Bond.

Know all men by these presents that we, William Pinkerton, Thomas B. Catron, and Edward C. Henniquez, are held and firmly bound unto Epifanio Ledoux in the full and just sum of fifteen hundred dollars, to be paid to the said Epifanio Ledoux or his attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of March, in the year of our Lord eighteen hundred and eighty-five.

40 Whereas, lately, at a regular term of the supreme court of the Territory of New Mexico, in a suit depending in said court between William Pinkerton, plaintiff in error, and Epifanio Ledoux, defendant in error, a judgment was rendered against the said plaintiff in error, and the said plaintiff in error having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant in error, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October, 1885, next:

Now, the condition of the above obligation is such that if the said plaintiff in error shall prosecute his said writ of error to effect and answer all damages and costs that may be adjudged against him if plaintiff in error fail to make his plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

WM. PINKERTON. [SEAL.]
THOMAS B. CATRON. [SEAL.]
EDWARD C. HENRIQUEZ. [SEAL.]

41 Approved by—

S. B. AXTELL,
Chief Justice of the Supreme Court of the Territory of New Mexico.

Endorsed: William Pinkerton, pl'ff in error, *vs.* Epifanio Ledoux, def't in error. Bond. Filed in my office this 21st day of March, 1885. C. M. Phillips, clerk supreme court Territory of New Mexico.

And afterwards, on, to wit, the 21st day of March, 1885, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a citation in the above-entitled cause, the original of which, with the endorsements thereon, is hereto attached and is in words and figures as follows, to wit:

Copy of Citation & Service.

The United States of America to Epifanio Ledoux, Greeting:

42 You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden

at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of New Mexico, wherein William Pinkerton is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned shall not be corrected and speedy justice should not be done to all parties in that behalf.

Witness the Honorable Samuel B. Axtell, chief justice of the supreme court of the Territory of New Mexico, this 21st day of March, in the year of our Lord one thousand eight hundred and eighty-five.

S. B. AXTELL,
Chief Justice Supreme Court Territory of New Mexico.

Service of the within citation is hereby acknowledged this 21st day of March, 1885.

M. W. MILLS,
Attorney for Defendant in Error.

43 Endorsed: William Pinkerton, pl'ff in error, *vs.* Epifanio Ledoux, def't in error. Citation. Filed March 21st, 1885. C. M. Phillips, clerk supreme court Territory of New Mexico.

And afterwards, on, to wit, the 21st day of March, 1885, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an affidavit of valuation in the above-entitled cause, which is in words and figures as follows, to wit:

Affidavit of Value.

TERRITORY OF NEW MEXICO, } ss:
County of San Miguel, }

In the Supreme Court of the Territory of New Mexico.

WILLIAM PINKERTON *vs.* EPIFANIO LEDOUX.

William Pinkerton, being duly sworn, deposes and says that he is the plaintiff in error in the above-entitled cause, and that the value of the property in controversy in said cause exceeds the
44 amount of five thousand dollars exclusive of costs and fees.

WM. PINKERTON.

Subscribed and sworn to before me this 21st day of March, 1885.
[NOTARIAL SEAL.] JOHN D. W. VEEDER,
Notary Public.

Endorsed: William Pinkerton, pl'ff in error, *vs.* Epifanio Ledoux, def't in error. Affidavit of value. Filed in my office this 21st day of March, 1885. C. M. Phillips, clerk supreme court Territory of New Mexico.

45 *Original Citation and Service.*

THE UNITED STATES OF AMERICA, *ss:*

To Epifanio Ledoux, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of New Mexico, wherein William Pinkerton is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to all parties in that behalf.

Witness the Honorable Samuel B. Axtell, chief justice of the supreme court of the Territory of New Mexico, this 21st day of March, in the year of our Lord one thousand eight hundred and eighty-five.

S. B. AXTELL,
Chief Justice Supreme Court Territory of New Mexico.

45½ [Endorsed:] William Pinkerton, pl'ff in error, *vs.* Epifanio Ledoux, def't in error. Citation. Filed March 21st, 1885. C. M. Phillips, clerk supreme court Territory of New Mexico.

Service of the within citation is hereby acknowledged this 21st day of March, 1885.

M. W. MILLS,
Attorney for Defendant in Error.

46 And heretofore, on, to wit, the 31st day of January, 1885, there was filed in the office of the clerk of said court the opinion of the judges of said court in said cause, a copy of which is hereunto annexed in accordance with the amendment to rule 8th of the Supreme Court of the United States, to be herewith transmitted, which is in words and figures as follows, to wit:

Opinion of Supreme Court N. M.

Supreme Court, Territory of New Mexico. January Term, 1885.

WILLIAM PINKERTON, Pl'ff in Error,
vs.
EPIFANIO LEDOUX, Def't in Error.

Error to first judicial district, Mora county.

Catron, Thornton & Clancy, att'ys for pl'ff in error; William Breeden and M. W. Mills, att'ys for defendant in error.

This is an action of ejectment commenced in the county of Colfax by the plaintiff in error against the defendant in error, in which the plaintiff claimed the title and right of possession to 160
47 acres of land in said county, which was in the possession of the defendant. The plaintiff claimed the land and right of

possession, alleging that the land in controversy is a part and parcel of a larger tract of land known as the "Nolan grant," which said grant the plaintiff alleges has, by sundry legal conveyances, been vested in him.

By agreement of parties the *the* case was transferred to Mora county and there tried, resulting in a verdict and judgment in favor of the defendant.

The case came into this court upon writ of error on application of the plaintiff, who assigns the following as errors:

1st. That the verdict is directly contrary to the evidence.

2nd. That the court erred in refusing to give the instructions asked for by the plaintiff.

3rd. The court erred in instructing the jury, without any reservation or exception, that the original petition for the Nolan grant must control the writ or act of juridical possession.

4th. The court erred in instructing the jury that they must determine what the boundaries of said grant were from the
48 words used in the petition and the writ of possession.

5th. That the court erred in instructing the jury that if, upon comparing descriptions given in the original petition and the act of juridical possession, they could not make them agree, they must give greater weight to the words and description of the petition.

6th. The court erred in instructing the jury that they would not be justified in going five hundred varas west of Los Cerritos de Santa Clara for the western boundary of the grant unless they found some authority for doing so in the words and description of the petition.

7th. The court erred in instructing the jury that if, from the description and words in the petition and writ of possession, they were unable to definitely locate the boundary of the grant, they must find the defendant not guilty.

8th. The court in effect submitted to the jury the question of the validity of the grant which had been favorably reported by the surveyor general.

9th. The court in effect took away from the consideration
49 of the jury the act of juridical possession.

To ascertain whether any error was committed upon the trial of this cause it is well to settle definitely what questions were in dispute between the parties. The plaintiff asked to recover from the defendant the possession of that "certain tract and parcel of land lying and being situated in the county of Colfax, in the Territory of New Mexico, and being a portion of that larger tract of land commonly known as and called "Nolan grant," being the same 160 acres of land upon which the said defendant now resides and occupies." This quotation from the plaintiff's declaration shows that it was incumbent on the plaintiff, to entitle him to recover, to prove title and right of possession to the larger tract, which included the land in controversy, viz., the "Nolan grant." To obviate the necessity of proving title in the plaintiff the counsel for the defendant admitted "that the plaintiff had acquired title of the original grantees in and

to the western one-half of that portion of the grant in ques-
50 tion lying north of a line running east and west across said grant through the Santa Clara hills." This left but two questions open for consideration: 1st, the location of the Nolan grant; second, Is the land in dispute included in its boundaries? The land in dispute has a known location, so that really but one question remained to be settled, viz., Where is the Nolan grant located? To inform the jury of the monuments which mark the exterior boundaries of the "Nolan grant," so that its location might be determined, the original petition asking for the grant, the grant itself, and the report of the justice of the peace who put the petitioner "Nolan" into possession (which latter is called the act of "juridical possession") were all given in evidence at the trial. The description in the original petition is as follows: "Being situated to the south of the possessions of Messrs. Miranda and Beaubien, on the south one league in a direct line, including the Sapello river according to its current (corrillera); on the west one other league from Red River and its current; on the southeast the little hills of Santa
51 Clara with their range to the little cañon of the Ocate." In the report of juridical possession the description of the Nolan grant is: "He was at the same time pointed out the boundaries of said possessions. They are, on the north, the lands of Don Guadalaupe Miranda and Don Carlos Beaubien; on the south, one league south of the Sapello river, following the same range; one the east, one league east of Red River, with the same range of the river, and on the west the little cañon of the Ocate and five hundred varas west of the little hills of Santa Clara in a direct line."

Mrs. Mary McKeller was called as a witness for the plaintiff, and testified:

"I have seen the fence where the boundary of the Beaubien and Miranda grant runs. Defendant's house is two or three miles south of the fence that marks the boundary. Defendant has lived there ever since I came to the country, four years and a half ago."

It is worthy of notice that no evidence was given on the trial to definitely fix the location of the Beaubien and Miranda grant, which the Nolan grant calls for as its northern boundary.
52 Some other parol testimony was given by the plaintiff tending to locate the "Nolan grant" and tending to prove that the land in controversy is included within its boundaries. A map was also exhibited to the jury purporting to show the location of the Beaubien and Miranda grant on the north, Red River on the east, the Sapello river on the south, and the cañon of the Ocate on the west, and also marking the location of the little hills of Santa Clara on the west. This outline of the facts is necessary in ascertaining whether the court committed any error in the charge to the jury, and especially necessary in determining whether the verdict of the jury is against the evidence in the case.

The first error assigned is: The verdict of the jury is directly against the evidence. Upon an examination of the evidence given upon the trial, considering its vagueness and want of certainty, we think the jury were justified in regarding the location of the Nolan

grant too uncertain to warrant them in returning a verdict for the plaintiff.

The second error assigned is: The court erred in refusing to give the instruction asked by plaintiff, viz:

53 "That when a claim to a Spanish or Mexican grant has been favorably reported by the surveyor general of New Mexico, as the one here in question has been, the grantees or their heirs or assigns are entitled to the absolute and exclusive possession of the land embraced within the limits of such grant; and in this case it is admitted that the plaintiff has all the right, title, and interest of the original grantees to all that portion of said grant north of an east-and-west line running through the cerritos of Santa Clara and west of a northwest-and-southeast line half-way between the east and west boundaries of said grant."

It is evident that this point was intended to confirm the title to the Nolan grant in the plaintiff. It is equally evident that it was not necessary, for the reason that the title to the Nolan grant has already been admitted by the defendant to be in the plaintiff. This assignment of error cannot be sustained, because such instruction was not necessary. The eighth error is equally easy to dispose of.

The error complained of is as follows: "The court, in effect,

54 submitted the question of the validity of the grant which had been favorably reported by the surveyor general." The court, in its charge, instructs the jury that "if they believe from the evidence that the land of which the defendant is in possession is within the limits of the grant which has been favorably reported by the surveyor general they must find the defendant guilty."

The charge of the court refutes the eighth assignment of error.

The sixth error complained of is as follows: "The court erred in instructing the jury that they would not be justified in going five hundred varas west of Los Cerritos de Santa Clara for the western boundary of the grant unless they found some authority for doing so in the words and description of the petition."

This instruction, whether right or wrong, makes the west line of the Nolan grant more favorable for the plaintiff's recovery in this suit than if run as the plaintiff claimed, which is abundantly demonstrated by the plat given in evidence on the trial by the plaintiff.

Hence this error, if it be one, is not available.

55 The 3rd, 4th, and 5th assignments of error all relate to the same subject and may be considered together. The gravemen of the charge in the whole three is that the jury are instructed that the description of the land contained in the original petition, which is the grant itself, must "control." These instructions must be taken as intended to apply to the evidence given in the case. The petition and the writ of juridical possession had both been given in evidence, and each professed to describe the Nolan grant. In their entire detail of description they were not alike, and the gist of the instructions complained of is that the court in substance instructed the jury that if, in finding the monuments called for as the boundary, they could find the monuments called for in the original petition, that they should have preference in the location of the

grant. This instruction, we think, is right. Therefore the 3rd, 4th, and 5th assignments of error cannot be maintained.

The 7th error assigned is as follows: "That the court erred in instructing the jury that if, from the descriptions and words
56 in the petition and writ of possession, they were unable definitely to locate the boundaries of the grant, they must find the defendant not guilty." Without giving special effect to some particular word used in the point under consideration, the substance of this sentence in the charge is virtually this: The plaintiff has given in evidence the petition for the Nolan grant, and also the act of juridical possession. Each contains specified objects to aid you in definitely locating that grant. If, from the descriptions contained in both, you cannot fix the location of the grant, you must find the defendant not guilty. No other description was given in evidence by the plaintiff differing from the boundaries described in the petition and juridical possession. Consequently we cannot see any reason for sustaining the seventh assignment of error.

The 9th error assigned is as follows: That the court in effect took away from the consideration of the jury the act of juridical possession. In the fourth error assigned the court recognized the writ of juridical possession as follows: "The jury must determine
57 the boundaries of said grant from the words used in the petition and "writ of possession." In the 7th error assigned the court instructed the jury "that if, from the descriptions in the petition and writ of possession, they were unable to locate the grant, they must find for the defendant." Here are twice at least that the court instructed the jury that the act of juridical possessson was on equal footing with the petition in locating the Nolan grant. This evidently quiets the complaint contained in this the 9th assignment of error.

Whilst the rules of court require that specifications of error shall point out specifically errors assigned against a charge of the court to the jury, yet a court does not favor criticising too closely isolated sentences selected from a general charge, and they have gone so far frequently that incidental errors, even when they plainly appear, will not be cause of reversal, provided the charge as a whole fairly submits the law and the facts of the case to the jury. It will be remembered that the only question in this case, as before
58 illustrated, was the location of the Nolan grant. To illustrate how faithfully and fairly this case was submitted to the jury I copy from the charge itself as follows: "You must be satisfied by a preponderance of evidence that the defendant is within the boundaries petitioned for by Nolan and into which he was inducted by the writ of possession, and unless you are so satisfied you must find the defendant not guilty. You must determine what these boundaries are from the words used in the petition and writ of possession. If from the description thus given and from the extraneous evidence furnished by the plaintiff you are not convinced that the defendant is upon the land petitioned for and given by writ of possession to the said Nolan, you must find the defendant not guilty. Upon the

other hand, if you are satisfied from all the evidence that the defendant is upon said land, you must find him guilty."

These instructions cover the whole case and are unexceptionable, and upon a critical examination of the whole case we have
59 not discovered error that would justify a reversal of the case.

The judgment of the court below is affirmed.

WILSON,
Associate Justice.

I concur.

JOSEPH BELL,
Associate Justice.

Clerk's Certificate.

UNITED STATES OF AMERICA, *Territory of New Mexico:*

I, C. M. Phillips, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the above and foregoing is a true and complete copy of the record of proceedings had, judgment given, and opinion filed in the cause herein mentioned as the same now appears remaining in my office.

In witness whereof I have hereunto subscribed my name and affixed the seal of the supreme court of the Territory of New Mexico, at Santa Fé, this fourteenth day of September, 1885.

[Seal Supreme Court Territory of New Mexico.]

C. M. PHILLIPS, *Clerk.*

Endorsed on cover: New Mexico Territory supreme court. No. 385. William Pinkerton, plaintiff in error, *vs.* Epifanio Ledoux. Filed October 13, 1885.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1888.

WILLIAM PINKERTON, PLAINTIFF IN ERROR,

vs.

EPIFANIO LEDOUX.

BRIEF FOR THE DEFENDANT IN ERROR.

HENRY E. DAVIS,
JAMES E. PADGETT,
For Defendant in Error.

JUDD & DETWEILER, PRINTERS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1888.

WILLIAM PINKERTON, PLAINTIFF IN ERROR,

vs.

EPIFANIO LEDOUX.

BRIEF FOR THE DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This is an action in ejectment for certain land in the Territory of New Mexico. The land claimed is alleged to be part of that certain Mexican grant known as the "Nolan Grant," and situated on the northwest *third* of said grant. (Rec. 3.) A map is in evidence in the record (opposite page 15), not "as evidence of the boundaries of the grant in question, nor to show any survey thereof, but only . . . of natural objects and course of streams referred to in other documents and testified to by witnesses." (15.) There are also in evidence the petition of Nolan and the grant to him (10–11); the writ of juridical possession of the grant (12); and the opinion of the surveyor general of New Mexico on the claim of Nolan's heirs under the grant. (13–'4.)

In addition, witnesses were examined for the purpose of showing that the defendant in error was in possession of the land claimed; it being admitted that the plaintiff in error is entitled to all the right and title of the original grantees "to

the western one-half of the portion of the grant in question lying north of a [certain] line running east and west across said grant." (18.)

ARGUMENT.

1. The first question presented is, what are the boundaries of the alleged grant in question?

The boundaries as given in the petition are set out on page 11 of the record, and are admitted by counsel for plaintiff in error (brief, p. 7), to be "impossible."

The boundaries as given in the writ of juridical possession are set out on page 12 of the record, as follows:

"On the north, the lands of Don Guadalupe Miranda and Don Carlos Beaubien; on the south, one league south of the Sapello river, following the same range; on the east one league east of Red River, with the same range of the river; and on the west the little cañon of Ocate and five hundred varas west of the little hills of Santa Clara, in a direct line."

By reference to the map and the conditions of its admission in evidence (15), it will be seen that the map is not evidence of boundaries, except as made so by other testimony. But no testimony in the record locates either the little cañon of Ocate or five hundred varas west of the little hills of Santa Clara; so that no western boundary of the grant is fixed. The plaintiff in error himself comes nearest to locating the land in controversy within the grant. He says (17):

"I know where the land in question is. I know where the little hills of Santa Clara and the cañoncito of the Ocate are. Beginning at a point five hundred varas west of the little hills of Santa Clara and running a straight line through the cañoncito of the Ocate, *and continuing it beyond in a straight line*, the house where defendant lives would be to the *east* of *that* line."

This manifestly falls far short of locating the land within

the grant; and as the jury found for the defendant in error it must be presumed that taking together the testimony and the map as explained to them they found the land without the grant: because the court instructed them to find against the defendant in error if they found the land within the limits of the grant as favorably reported by the surveyor general. (19.)

2. It is assigned as error—and this seems to be the chief reliance of the plaintiff in error—that the trial court ruled that the petition and the writ of juridical possession should be considered together by the jury in determining the boundaries of the grant, and that the petition must control the writ; whereas the court should have confined the jury to consideration of the writ of juridical possession.

To this there is a twofold answer.

First, as the evidence failed to show that the land in controversy is within the limits of the writ of juridical possession, the instruction was harmless to the plaintiff in error; for on no proper ruling could he have been entitled to recover.

Second, the cases in which the boundaries of the writ of juridical possession have been held paramount were all cases of confirmed grants wherein, in the absence of boundaries in the decree of confirmation, the surveyor was held bound by the writ. But this is not such case. The grant was never confirmed, and the confirming power (in this case, Congress), alone could control the boundaries. The report of the surveyor general, which is in the record (13) was in advance of confirmation, and it gives no boundaries whatever, except that in one place it mentions "the boundaries set forth in the *petition*" of Nolan, and in another "the boundaries set forth in the petition *and* juridical possession." Either of these boundaries was impossible, as already seen.

But another reason that the writ of juridical possession cannot control lies in the fact that the writ must depend for its validity upon the grant on which it is founded; and while the writ might be, and usually was, for more limited boundaries than those of the petition, it never could operate to give the grantee more than he asked and was granted. In this case it is clear that the western boundary of the petition and grant stopped one league west of the Red River, whereas the western boundary of the writ, so far as it is a boundary at all, is very much more distant to the west from the river. The writ, if allowed to govern, would thus put the grantee into possession of a vastly larger tract than asked for and granted. The necessary result is that the grant cannot lawfully be located, and so cannot be availed of in law by any one.

HENRY E. DAVIS,
JAMES E. PADGETT,
For Defendant in Error.

BRIEF OF THE PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 114.

WILLIAM PINKERTON, PLAINTIFF IN ERROR,

vs.

EPIFANIO LEDOUX.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

F. W. CLANCY,
Counsel for Plaintiff in Error.

But another reason that the writ of juridical possession cannot control lies in the fact that the writ must depend for its validity upon the grant on which it is founded; and while the writ might be, and usually was, for more limited boundaries than those of the petition, it never could operate to give the grantee more than he asked and was granted. In this case it is clear that the western boundary of the petition and grant stopped one league west of the Red River, whereas the western boundary of the writ, so far as it is a boundary at all, is very much more distant to the west from the river. The writ, if allowed to govern, would thus put the grantee into possession of a vastly larger tract than asked for and granted. The necessary result is that the grant cannot lawfully be located, and so cannot be availed of in law by any one.

HENRY E. DAVIS,
JAMES E. PADGETT,
For Defendant in Error.

BRIEF OF THE PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 114.

WILLIAM PINKERTON, PLAINTIFF IN ERROR,

vs.

EPIFANIO LEDOUX.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

F. W. CLANCY,
Counsel for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1888.

WILLIAM PINKERTON,
PLAINTIFF IN ERROR,

v.

EPIFANIO LEDOUX.

No. 114.

In Error to the Supreme Court of the Territory of New Mexico.

Brief of the Plaintiff in Error.

STATEMENT OF THE CASE.

This is an action of ejectment brought by the plaintiff in error to recover from defendant the possession of a piece of land situated within, and being a portion of, the tract known as the Nolan grant. The case was begun in the district court for Colfax county, New Mexico, but by agreement of the parties, the venue was afterwards changed to Mora county, where a trial was had on the 16th of April, 1884, resulting in a verdict for defendant.

Upon the trial plaintiff introduced in evidence the

original petition of Gervacio Nolan, Juan Antonio Aragon, and Antonio Maria Lucero, dated November 15, 1845, and addressed to the then governor of New Mexico, asking for the grant to them of a piece of land on the Colorado river, upon which petition was endorsed an order, signed by Governor Armijo, granting the land asked for. He put in evidence, also, the act of juridical possession, executed by Tomas Benito Lalanda, November 30, 1845, and the decision of the surveyor-general of New Mexico as to the validity of the grant, made under the act of Congress of 1854. (10 Statutes at Large, 309.) He offered in evidence the petition of the claimants to the grant, addressed to the surveyor-general in 1860, but the same was excluded by the court. He further introduced in evidence a map from the office of the surveyor-general, a copy of which appears in the printed record. Oral evidence was given to show that the land occupied by defendant was two or three miles south of the northern boundary of the grant, and a mile or a mile and a half east of the western boundary. Defendant admitted, by his counsel, that plaintiff had acquired all the right and title of the original grantees to the western one-half of that portion of the grant lying north of a line running east and west across the grant through the Santa Clara hills.

Defendant offered no evidence, except a map which showed the same facts as the one introduced by the plaintiff.

The only question to be submitted to the jury was as to whether the land occupied by defendant was within the boundaries of the grant. It is claimed by plaintiff in error that this question was not properly submitted to the jury under the instructions of the court, and that indeed, under the evidence, it was properly the duty of the court to direct a verdict for the plaintiff; but as the court was

not requested to give such direction, the failure to do so cannot be assigned as error.

The plaintiff in error has filed the following—

ASSIGNMENT OF ERRORS.

WILLIAM PINKERTON, Plaintiff in Error,
v.
EPIFANIO LEDOUX.

In Error to the Supreme Court of the Territory of New Mexico.

Now comes said plaintiff in error and says that there is manifest error in the record and proceedings in said cause in the court below where the same was tried, in this:

1. That the verdict was directly contrary to all the evidence.

2. That the court erred in refusing to instruct the jury as follows: "That when a claim to a Spanish or Mexican "grant has been favorably reported by the surveyor-gen- "eral of New Mexico, as the one here in question has "been, the grantees or their heirs or assigns are entitled "to the absolute and exclusive possession of the land em- "braced within the limits of such grant, and in this case "it is admitted that the plaintiff has all the right, title, and "interest of the original grantees to all that portion of "said grant north of an east and west line running "through the Cerritos de Santa Clara, and west of a "northwest and southeast line, half way between the east "and west bounderies of said grant." (Pages 18 and 19 of the printed record.)

3. That the court erred in instructing the jury as follows:

"1. You must be satisfied by a preponderance of evi-
" dence that defendant is within the boundaries petitioned
" for by Nolan, and into which he was inducted by the
" writ of possession, and unless you are so satisfied you
" must find defendant not guilty. You must determine what
" these boundaries are from the words used in the petition
" and in the writ of possession. If, from the description
" thus given, and from the extraneous evidence furnished
" by plaintiff, you are not convinced that the defendant is
" upon the land petitioned for and given by writ of pos-
" session to the said Nolan, you must find defendant not
" guilty. If, upon the other hand, you are satisfied from
" all the evidence that defendant is upon said land, you
" must find him guilty. The words used in Nolan's peti-
" tion to describe the boundaries of the grant are as fol-
" lows: 'Por el Norte.' The Maxwell grant. 'Por el sur
" 'una legua en linea recta quedando dentro del rio del
" 'Sapello segun su cordillera.' 'Por el oeste otra legua
" 'del mismo rio Colorado y su cordillera y por el sudeste
" 'los serritos de Santa Clara con su cordillera hasta el
" 'canoncito de Ocate.' These are the words of descrip-
" tion used by Nolan in his petition. The words and de-
" scription given in the writ of possession are as follows:
" 'El Norte,' as above, the Maxwell or Beaubien and Mi-
" randa grant. In this respect the descriptions are the
" same. 'Por el sur, una legua al sur del rio Sapello,
" 'siguiendo la misma cordillera.' 'Por el oriente una
" 'legua al oriente del rio Colorado con la misma cordillera
" 'del rio y por el poniente el canoncito de Ocate y al poni-
" 'ente quinientas varas de los serritos de Santa Clara a
" 'linea recta.' If, upon comparing these descriptions,
" you cannot make them agree, you must give the greater
" weight to the words and descriptions of the petition, for
" the petition must control the writ. In other words, the
" writ of possession must conform to the petition, for the
" grant was made according to the boundaries prayed for
" in the petition. You would not be justified in going 500
" varas west of Los Serritos de Santa Clara for the western
" boundary of the grant unless you find some authority for
" doing so in the words and descriptions of the petition.

" If, from the descriptions and words in the petition and " writ of possession, you find yourselves unable definitely " to locate the boundaries of the grant, you must find de- " fendant not guilty."

4. That the court erred in instructing the jury, as above set forth, that they must determine what the boundaries of said grant were from the words used in the petition and in the writ of possession, without any proper explanation as to the effect and weight to be given to the act of possession.

5. That the court erred in instructing the jury as above set forth, without any reservation or exception or explanation, that the original petition for the grant must control the writ or act of juridical possession.

6. That the court erred in instructing the jury as above set forth, that if, upon comparing the description given in the original petititon and in the act of juridical possession, they could not make them agree, they must give greater weight to the words and description of the petition, when the evidence clearly showed that the boundaries set forth in that petition were impossible boundaries in part, and were perhaps doubtful in other parts.

7. That the court erred in instructing the jury as above set forth, that they would not be justified in going five hundred varas west of Los Serritos de Santa Clara for the western boundary of the grant, unless they found some authority for doing so in the words and description of the petition, without calling the attention of the jury to the nature of the act of juridical possession, and its possible effect on this boundary call.

8. That the court erred in instructing the jury that if, from the descriptions and words in the petition and writ of possession, they were unable definitely to locate the boundaries of the grant, they must find defendant not

guilty, disregarding the fact that the location of all the boundaries of the grant, in view of the admission made by defendant, was not essential to plaintiff's right to recover.

9. That the court, in effect, submitted to the jury the question of the validity of the grant.

10. That the court, in effect, took away from the consideration of the jury the act of juridical possession.

Wherefore said plaintiff prays that said judgment be reversed, vacated, set aside, and altogether held for nothing.

F. W. CLANCY,
Counsel for Plaintiff in Error.

BRIEF.

The questions to be discussed in this case are two, viz:

1. There is nothing in the evidence to support the verdict.

2. The instructions of the court did not properly submit to the jury the only point which was to be determined—Was the defendant within the boundaries of the portion of the grant claimed by plaintiff in error?

1.

There was positive evidence on behalf of plaintiff that the land in question was within the Nolan grant, as will be seen by reference to the evidence of Mrs. McKellar and of defendant and plaintiff, on pages 15 to 18 of the printed record. Defendant offered no evidence to contradict this. In such a state of facts plaintiff was clearly entitled to a decision in his favor.

Mitchell *v.* Hicks, 18 N. Y., 558.

2.

In the examination of the second question we must consider the original grant papers and the rules of law appli-

cable thereto. The original petition gave as the boundaries of the land asked for the following: "On the north, the "possession of said Messrs. Miranda and Beaubien; on "the south, one league in a direct line, including the Sa- "pello river according to its current (cordillera); on the "west, another league from Red River and its current; "and on the southeast the little hills of Santa Clara, with "their range to the little cañon of the Ocaté." (Page 11 of the printed record.)

The governor granted the land with the boundaries asked for, and directed the proper judicial officer to put the grantees in possession. A consideration, however, of the boundaries set out in the petition, will show that two of them, the eastern and western, are impossible boundaries, and that the language as to the southern boundary is not perfectly clear. Under these circumstances, in accordance with repeated decisions of this Court, resort must be had to the act of juridical possession to ascertain what was intended by the granting power. "This proceeding involved an as- "certainment and settlement of the boundaries of the "lands granted by the appropriate officers of the govern- "ment, specially designated for that purpose, and has all "the force and efficacy of a judicial determination. It "bound the former government and is equally binding "upon the officers of our Government. * * * The "juridical possession was conclusive as to the boundaries "and extent of the land granted."

U. S. *v.* Pico, 5 Wallace, 539.
Graham *v.* U. S., 4 Wallace, 260.
Van Reynegan *v.* Bolton, 95 U. S., 35.
Leese *v.* Clark, 18 Cal., 567-574.
Page *v.* Scheibel, 11 Mo., 187.

Referring to the boundaries above given, it will be seen

that the boundary on the west is "a league from the Red "River and its current," and on the east, "the little hills "of Santa Clara, with their range to the little cañon of the "Ocaté." The map, which is in evidence, shows that the Red River is far to the east of the Santa Clara hills, instead of to the west. This is corrected in the act of juridical possession. Further, the boundary given on the east, which should, of course, be on the west, is, in the original Spanish, "los Serritos de Santa Clara con su cordillera hasta el cañoncito de Ocaté."

Referring again to the map, it will be seen that the Serritos or little hills have an east and west range or direction, and that that direction prolonged would not touch the Ocaté creek at all; but the meaning of this boundary call is shown in the act of possession, where the judge declares it to be in substance a straight line running through the little cañon of Ocaté, and a point five hundred varas west of the little hills of Santa Clara. His intention clearly was to run west from the hills with their range or direction, until he reached a point from which a north and south line would run through the cañoncito of Ocaté. In view of the actual location on the earth's surface of the natural objects, which is undisputed, there seems to be no other way in which this boundary could have been located with due regard to the language in the original petition. A literal translation from the Spanish is, "the little hills of "Santa Clara, with their range (or course or direction) as "far as the little cañon of the Ocaté." It appears, however, from the map, that the officer who gave the possession did not go as far west of the little hills of Santa Clara as he should have done, and the line from the point which he fixed, to the cañoncito, runs a little west of north. It is to be observed that the word "cordillera" is used several times in the original Spanish, referring to hills and

rivers, and that the translator has translated it as "cur-" rent," and also as "range." A more accurate translation in this connection would be "course" or "direction."

The act of possession gives the boundaries as follows:

"On the north, the lands of Don Guadalupe Miranda " and Don Carlos Beaubien; on the south, one league south " of the Sapello river, following the same range; on the " east, one league east of Red River, with the same range " of the river, and on the west the little cañon of Ocaté " and five hundred varas west of the little hills of Santa " Clara, in a direct line."

These boundaries are clear, certain, and consistent.

Under these circumstances, clearly the court should have directed the jury that the writ of possession was conclusive and should be taken as the proper guide in ascertaining the limits of the grant, and whether or not defendant was within them. If such an instruction had been given, a verdict for plaintiff must have been returned.

We find, however, the instruction given by the court, hereinbefore fully set forth, so framed that if the court had actually intended to mislead and confuse the jury, and to force a verdict for defendant, better language for the purpose could not possibly have been employed. The instruction tells the jury that the boundaries must be determined from the words used in the petition and in the writ of possession, and then carefully proceeds to set out the descriptions in the two papers, so that the attention of the jurors cannot fail of being drawn to the doubtful and impossible boundaries in the petition, and the differences between them and those in the act of possession. They are then told that if they cannot make these descriptions agree, they must give greater weight to the impossible boundaries in the petition, "for the petition must control